



## FAIRHAVEN SELECT BOARD

### Agenda

*Monday, July 12, 2021*

*6:30 p.m.*

*Town Hall – 40 Center Street – Fairhaven*

RECEIVED  
TOWN CLERK

2021 JUL -8 P 3:07

*Pursuant to Chapter 20 of the Acts of 2021, this meeting will be conducted in person and via remote means, in accordance with applicable law. This means that members of the public body as well as members of the public may access this meeting in person, or via virtual means. In person attendance will be at the meeting location listed above, and it is possible that any or all members of the public body may attend remotely, with in-person attendance consisting of members of the public.*

Log on to: <https://zoom.us/j/92244713624?pwd=NW50dzB0ZlRyRFFBNDJML0J0SGFBZz09>

or call: 1-929-205-6099

Meeting ID: 922 4471 3624

Passcode: 791715

The meeting can also be viewed live on Channel 18 or on FairhavenTV.com

#### **A. MINUTES**

1. Approve minutes of June 21, 2021—Open Session

#### **B. TOWN ADMINISTRATOR'S REPORT**

#### **C. COMMITTEE LIAISON REPORTS**

#### **D. ACTION**

1. Event Permit: Our Lady of Angels, Once Day All Alcoholic Beverages License for the Annual Three-Day Feast: September 4, 2021, September 5, 2021, September 6, 2021
2. Approve year-end transfers

#### **E. APPOINTMENTS**

1. 7:00 pm Application for Altered Premise - JEJM, Corp d/b/a Traveler's Ale House, 111 Huttleston Ave
2. 7:05 pm Approval of Aquaculture lease – Taylor Cultured Seafood to Blue Stream Shellfish
3. 7:10 pm Meet and Greet: Precinct 3

#### **F. POSSIBLE ACTION/DISCUSSION**

1. Rogers Reuse Committee: adding a member of the Economic Development Committee
2. Rogers School – New England Preservation lawsuit
3. Discuss implications of Town Meeting Article 56: Amendment to Town By-law Chapter 50-13, part 2
4. Update of Opioid Litigation

#### **G. EXECUTIVE SESSION**

#### **H. NOTES AND ANNOUNCEMENTS**

1. The next regularly scheduled meeting of the Select Board is Wednesday, July 28, 2021 at 6:30 p.m. in the Town Hall Banquet Room.

#### **ADJOURNMENT**

*Subject matter listed in the agenda consists of those items that are reasonable anticipated (by the Chair) to be discussed. Not all items listed may be discussed and other items not listed (such as urgent business not available at the time of posting) may also be brought up for discussion in accordance with applicable law. MGL, Ch. 30A, § 20(f) requires anyone that intends to record any portions of a public meeting, either by audio or video, or both, to notify the Chair at the beginning of the meeting.*



**Fairhaven Board of Selectmen  
Meeting Minutes  
June 21, 2021**

OK  
WLG

Present: Chairman Daniel Freitas Vice-Chairman Robert Espindola, Selectman Keith Silvia, Interim Town Administrator Wendy Graves and Administrative Assistant Vicki Oliveira

The meeting was videotaped on Cable Access and Zoom meeting application.

Chairman Freitas opened the meeting at 6:31 pm in the Town Hall Banquet Room

**Minutes**

Mr. Espindola made a motion to approve the Open Session minutes of June 1, 2021. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the Executive Session minutes of June 1, 2021. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the Open Session minutes of June 7, 2021. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the Executive Session minutes of June 7, 2021. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the Open Session minutes of June 9, 2021. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the Open Session minutes of June 10, 2021. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the Open Session minutes of June 12, 2021. Mr. Silvia seconded. Vote was unanimous. (3-0)

**Town Administrator's Report**

Ms. Graves told the Board there are approximately 165 storage boxes that will be shredded on Wednesday.

Ms. Graves has been busy working on the performance reviews and reminding employees to clean out the boxes.

Ms. Graves met last week with the ARPA working group and discussed the process they will follow; the next meeting will be in July.

Ms. Graves told the Board, the recent Town Meeting vote increasing the Board of Selectmen from 3 to 5 members will be going to the legislature for approval.



### **Committee Liaison Reports**

Mr. Espindola said the Broadband Study Committee will meet on Thursday to discuss Article 34. The Consultant will be in Massachusetts next week, so the meeting may be postponed until then.

Mr. Espindola said the Marine Resources Committee (MRC) met prior to Town Meeting and will take the summer months off. Congratulations to the MRC for the passing of the new rules and regulations at Town Meeting.

Mr. Espindola said the Bikeway Committee has a few new members and they will be working with Town Planner Paul Foley on safety signs for the bike path.

Mr. Espindola will meet on Wednesday night with SRPEDD where he will find out if he will be chosen the representative for the SMMPO.

Mr. Espindola said the Economic Development Committee (EDC) met last week and received updates from Mr. Foley on his grant work. The EDC would like to have Mr. Foley be part of the Capital Planning Committee.

*At 6:38 pm the Board took a five-minute recess due to the loss of the internet connection*

Mr. Espindola said that the EDC would like to see Mr. Foley as a member on the Rogers Reuse Committee.

Mr. Silvia said attended a recent Library Trustees meeting, where they reported the Library has been very busy now that they have opened up again.

Mr. Silvia said Mr. Foley will do a presentation to the Board on the Dog Park.

### **Request for Third Party Use of Licensed Premises Permit and Special One Day Liquor License**

Mr. Espindola made a motion to approve the request for Third Party Use of Licensed Premises Permit and Special One Day Liquor License at Off the Hook, 56 Goulart Memorial Drive: July 22-25, 2021. Mr. Silvia seconded. Vote was unanimous. (3-0)

### **Request to join Broadband**

Mr. Espindola made a motion to appoint Nicole Antonio to the Broadband Study Committee. Mr. Silvia seconded. Vote was unanimous. (3-0)

### **Request to join Conservation**

Mr. Freitas read a memo from Conservation Agent Whitney McClees regarding a conservation violation against Gerald Delano.

Mr. Freitas asked if there was motion to appoint Gerald Delano to the Conservation Commission. There was no motion made.

Mr. Espindola made a motion to appoint Michael Kelly to the Conservation Commission. Mr. Silvia seconded. Vote was unanimous. (3-0)

### **Lagoa Friendship Pact Committee**

Mr. Freitas read a letter from School Committee member Kyle Bueno thanking the Board for the opportunity to serve on the Lagoa Friendship Pact Committee as the School Committee Representative.



(Attachment A). Mr. Espindola made a motion to appoint Kyle Bueno as the School Representative to the Lagoa Committee. Mr. Silvia seconded. Vote was unanimous. (3-0)

Ms. Graves told the Board the Economic Development Committee has appointed Eddie Lopez to the Lagoa Committee as their representative at a most recent meeting; and since the Lagoa Committee must meet soon due to the arrival of Mayor Calisto this is a time sensitive appointment. Mr. Espindola made a motion to appoint Eddie Lopez as the Economic Development Representative on the Lagoa Committee. Mr. Silvia seconded. Vote was unanimous. (3-0)

#### **Taylor Cultured Seafood: Title Transfer of 44 Acres Aquaculture License**

Mr. Freitas said the Board will table this item until a future meeting.

#### **Year-End Transfers**

Mr. Espindola made a motion to approve the year end Fire Department transfer for \$1,614. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the year end transfer of \$22,000 from Unemployment to Dept-Interest. Mr. Silvia seconded. Vote was unanimous. (3-0)

Mr. Espindola made a motion to approve the year end Information Technology Department transfer of \$12,480.75 from salary to contracted services. Mr. Silvia seconded. Vote was unanimous. (3-0)

#### **Purple Heart Town Designation**

Resident Kathy Lopes and Veterans Agent Brad Fish met with the Board of Selectmen to request support in designating the Town of Fairhaven a Purple Heart Community. Ms. Lopes told the Board she saw the Purple Heart Community sign in Taunton MA and thought this would be a nice idea for Fairhaven to honor our purple heart recipients. Mr. Fish said the Department of Transportation will supply the signs at the entry points of Fairhaven. (Attachment B)

Mr. Espindola made a motion to support the application process for the Town of Fairhaven to become a Purple Heart Community. Mr. Silvia seconded. Vote was unanimous. (3-0)

#### **Rogers School Update**

Health Agent Dave Flaherty told the Board there is evidence mold and moisture at Rogers School but not sure what type of mold there is. He feels the repair of the roof and the sources of moisture will alleviate the problem. The asbestos is an easy fix by a qualified professional. (Attachment C).

Mr. Silvia feels SMEC is owed an apology for suggesting that they would be putting their students in harms way by putting them in a molding building. Mr. Espindola said he went into Rogers School prior to Town Meeting to see the building and any signs of mold because he wanted to have all the information for Town Meeting members before the article was voted on. Mr. Espindola said he spoke at Town Meeting for himself and not as a Selectman. Mr. Espindola is still concerned about the law suit by Mike Ristucia and Zach Mayo.

*At 7:20 pm the Board took a two-minute recess due to the loss of the internet connection*

Mr. Espindola is worried about the costs to update the Rogers School building and would like to have Joe Booth Architects evaluate the property.



## **Meet and Greet: Precinct 2**

Precinct 2 Chairperson Ann Richard attended via Zoom. Ms. Richard asked the Board about the North Street drainage article at town meeting. Mr. Freitas told Ms. Richard the Board was informed by Town Counsel to pass over the article. Diedre Healy told the Board there is an ongoing issue with trash washing up along the shoreline. Anne Smith expressed concerns regarding the noise level from a local establishment on the weekends.

## **Town Clerk Retirement**

Mr. Freitas announced that Town Clerk Carolyn Hurley will retire on June 30, 2021. Assistant Town Clerk Linda Fredette met with the Board to answer any questions. Mr. Espindola made a motion to appoint Linda Fredette as the Acting Town Clerk until the next Town election. Mr. Silvia seconded. Vote was unanimous. (3-0).

The Board thanked retiring Town Clerk Hurley for her service.

## **Rogers School: National Historical Register**

Doug Brady from the Rogers Reuse Committee met with the Board to request a letter of support from the Board of Selectmen when they apply for the National Historic Register for Rogers School.

*At 6:54 pm the Board took a 4-minute recess due to the loss of the internet connection*

Mr. Brady told the Board the Rogers Reuse Committee will review the application with the Board before submitting it for approval.

Mr. Espindola made a motion to show support from the Board of Selectmen for the original portion of Rogers School on the National Historic Register. Mr. Silvia seconded. Vote was unanimous. (3-0)

## **COVID- 19 Protocol for Town Hall**

Ms. Graves read to the Board the new orders put in place by Governor Baker on June 15, 2021.

Ms. Graves said the plexiglass barriers will remain in place at Town Hall

Mr. Espindola made a motion to remove the mask mandate at Town Hall effective June 22, 2021. Mr. Silvia seconded. Vote was unanimous. (3-0)

## **Flag Policy**

Mr. Freitas reminded the Board back in 2019 when the issue of flying a flag at Town Hall first came up, Town Counsel suggested that there be no flags flying at Town Hall to not set a precedent. The Board discussed the issues of flying a flag at Town Hall and the drawbacks if they were asked to fly a flag that represents a hate group. Mr. Silvia and Mr. Silvia thanked Mr. Espindola for all his hard work in putting this flag/banner policy but feel this is a no-win situation and would only like to see only the American flag, State flag or Military flag flown. Mr. Espindola would like to check with Town Counsel before making a decision on changing the policy.

Mr. Freitas made a motion to rescind the flag policy except the US flag, State flag or Military flag. Mr. Silvia seconded. Vote passed. (2-1)

*At 7:52 pm the Board took a 4-minute recess due to the loss of the internet connection*

## **Juneteenth 2022**



Mr. Freitas said an employee requested to have the Juneteenth holiday off but the request was made too late for the Board to decide. Ms. Graves reminded the Board; the short notice was not the only issue, by giving the employees a paid day off this would cost the Town approximately \$30,000 in overtime fees. Mr. Espindola would like to see what other communities are doing in terms of other holidays and what the Town's Unions position are on this. The Board will discuss further this at a future meeting

#### **Board of Selectmen Meeting Schedule for Remainder of The Year**

Mr. Espindola is concerned about replacing the date of the cancelled meeting the night of the recall election because there are important issues that will be need be discussed.

Mr. Espindola made a motion to add meeting between July 27-29, 2021. Mr. Silvia seconded. Vote was unanimous. (3-0)

#### **Town Meeting Article 56: Amendment to Town By-law Chapter 50-13, part 2**

Mr. Espindola asked to place this on the agenda to discuss the impact of this article. The Board discussed the remote participation and the costs to the Town as a result of this article.

Mr. Espindola made a motion to continue with Zoom coverage and make no change until there is an update from the Cable Access Director. Mr. Silvia seconded. Vote was unanimous. (3-0)

*At 8:05 pm Mr. Silvia left the room*

#### **Update to Interim Town Administrator Contract**

Mr. Freitas read a memo from Town Counsel regarding the contract of Interim Town Administrator. Mr. Espindola would like to make no changes at this time. Mr. Freitas agreed. (Attachment D).

*At 8:07 pm Mr. Silvia returned to the room*

#### **Correspondence**

Mr. Espindola made a motion to accept the resignation of Ronnie Medina on the Commission on Disability and thank him for his service. Mr. Silvia second. Vote was unanimous. (3-0)

Mr. Espindola made a motion to accept the resignation of John Dallen on the Conservation Commission and thank him for his service. Mr. Silvia second. Vote was unanimous. (3-0)

Mr. Espindola made a motion to accept the resignation Susan Spooner on the Sustainability Committee and thank her for her service. Mr. Silvia second. Vote was unanimous. (3-0)

Mr. Espindola made a motion to accept the resignation James Anderson on the Sustainability Committee and thank him for his service. Mr. Silvia second. Vote was unanimous. (3-0)

#### **Notes and Announcements**

Mr. Espindola thanked the anonymous artist who put the Pride Flag in the crosswalk with sidewalk chalk.

The Board wished everyone a Happy July 4<sup>th</sup>.

At 8:10 pm Mr. Espindola made a motion to adjourn. Mr. Silvia seconded. Vote was unanimous. (3-0)

Respectfully submitted,



*Vicki L. Oliveira*

Vicki L. Oliveira  
Administrative Assistant

- A. Letter from Kyle Bueno
- B. Purple Heart Trail designation
- C. Memo from Health Agent re: Rogers School
- D. Email from Town Counsel re: Interim Town Administrator Contract

DRAFT

# SELECTMEN'S MEETING

Agenda Item for Select Board's Meeting

Request for a Special One Day All Alcoholic Beverages License  
For the Annual Three Day Feast  
"2021"

From:

OUR LADY OF ANGELS CATHOLIC ASSOCIATION  
7 Jesse Street  
Fairhaven, MA 02719

Date & Times to be held...

Saturday, September 4, 2021 (5:00 PM-12:00 Mid Night)  
Sunday, September 5, 2021 (12:00 Noon-12:00 Mid Night)  
Monday, September 6, 2021 (12:00 Noon-10:00 PM)



## TOWN OF FAIRHAVEN

### APPLICATION FOR SPECIAL LICENSE

General Law Chapter 138, Section 14

Date: 6/22/21

To the Licensing Board:

The undersigned hereby applies for a SPECIAL LICENSE under provisions of Chapter 138, Section 14 to sell

ALL ALCOHOLIC BEVERAGES  
(Beer and Wine) or (All Alcoholic Beverages)

For a 91ST ANNUAL O.L.O.A FEAST to be held at

7 JESSE ST, FAIRHAVEN, 9/4, 9/5 AND 9/6/2021

by OUR LADY OF ANGELS CATHOLIC ASSOCIATION

date SAT. 9/4/21 SUN 9/5/21 MON 9/6/21  
from (5PM-12AM) (12PM-12AM) (12PM-10AM)  
to

Name of Applicant: GARY SOUZA FOR OUR LADY OF ANGELS CATHOLIC ASSN.

Address of Applicant: 7 JESSE ST, FAIRHAVEN, MA  
02719

Telephone: [REDACTED]

For a banquet or public dinner, the applicant should be responsible, manager of the banquet or public dinner.

For a picnic, field day or outing, applicant should be a representative of responsible organization or individual.

#### FEE:

Beer & Wine \$20.00

All Alcoholic \$35.00



**TOWN OF FAIRHAVEN**  
**Request for Appropriation Transfers**  
**Between or Within Departments**

Date: 6/30/21

Board of Selectmen & Finance Committee  
Town of Fairhaven

Members:

Request is hereby made for the following transfer between departmental appropriations in accordance with Chapter 44, Section 33B, of the Massachusetts General Laws. (If your budget does not have sufficient funds within other categories to cover this deficit, please fill in amount requested and #2-To be transferred to (account number). Please provide in the comment section below your explanation for lack of funding for review by the Town Administrator).

Amount requested:

**\$200.00 (Conservation)**

1. To be transferred from (account number): **\$200.00 (001-171-00-5420-00-0106) Office Supplies**

2. To be transferred to (account number): **\$200.00 (001-171-00-5111-00-0106) Salary**

Comments: The YE transfer is needed to cover payroll because there were some employees with higher hourly rates doing some of the meetings. In addition, some meetings ran much longer than anticipated when the budget was developed.

Request submitted by (signature required): Whitney McClees  
Whitney McClees, Conservation Agent/Sustainability Coordinator  
Officer or Department Head

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**APPROVALS**

**Board of Selectmen:**

Date of Meeting: \_\_\_\_\_

**Signatures:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Transfer disapproved (checkmark): \_\_\_\_\_

**Finance Committee:**

Date of Meeting: \_\_\_\_\_

Number Present and Voting: \_\_\_\_\_

Approved by Majority, list vote: \_\_\_\_\_

Transfer disapproved (checkmark): \_\_\_\_\_

**Signature:**

\_\_\_\_\_  
Chairman, Finance Committee

Please Note:

1. This alternative year-end transfer procedure applies for the last two months of the fiscal year (May and June) and the first 15 days of July (for that same fiscal year) and requires a majority vote of the Board of Selectmen and the Finance Committee.
2. This procedure **cannot** be used to transfer from a Municipal Light or School Department.
3. Signed originals of this request (required in quadruplicate) will be distributed to the Board of Selectmen, the Finance Committee, the Town Accountant, and the requesting department.

**TOWN OF FAIRHAVEN**  
**Request for Appropriation Transfers**  
**Between or Within Departments**

Date: 7/1/21

Board of Selectmen & Finance Committee  
Town of Fairhaven

Members:

Request is hereby made for the following transfer between departmental appropriations in accordance with Chapter 44, Section 33B, of the Massachusetts General Laws. (If your budget does not have sufficient funds within other categories to cover this deficit, please fill in amount requested and #2-To be transferred to (account number). Please provide in the comment section below your explanation for lack of funding for review by the Town Administrator).

Amount requested: Board of Appeals \$60.00

1. To be transferred from (account name & number): 001-176-00-5111-00-0049 (Salary)
2. To be transferred to (account name & number): 001-176-00-5303-00-0049 (Advertising)

Reason for Transfer: Exceeding allotted amount on advertising

Request submitted by (signature required):

  
\_\_\_\_\_  
Officer or Department Head

**APPROVALS**

**Board of Selectmen:**  
**Date of Meeting:** \_\_\_\_\_

**Signatures:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Transfer disapproved (checkmark): \_\_\_\_\_

**Finance Committee:**  
**Date of Meeting:** \_\_\_\_\_

Number Present and Voting: \_\_\_\_\_

Approved by Majority, list vote: \_\_\_\_\_

Transfer disapproved (checkmark): \_\_\_\_\_

**Signature:**  
\_\_\_\_\_  
Chairman, Finance Committee

Please Note:

1. This alternative year-end transfer procedure applies for the last two months of the fiscal year (May and June) and the first 15 days of July (for that same fiscal year) and requires a majority vote of the Board of Selectmen and the Finance Committee.
2. This procedure **cannot** be used to transfer from a Municipal Light or School Department.
3. Signed originals of this request (required in quadruplicate) will be distributed to the Board of Selectmen, the Finance Committee, the Town Accountant, and the requesting department.

# **SELECTMEN'S MEETING**

**Liquor License Hearing**

**Monday, July 12, 2021**

**@7:00 PM**

**Application submitted for:**

**AN ALTERED PREMISE  
(Year Round Outdoor Area)**

**From:**

**JEJM, Corp.  
Travelers Ale House  
111 Huttleston Avenue  
Fairhaven, MA 02719  
Minh Tieu, Manager**

Bldg. Comm.-See Attached email  
Planning Dept.-See Attached email  
Fire Dept.-See Attached email  
Abutters-Applciant to submit Certified mailing receipts  
Taxes-OK  
WC-OK



## **TOWN OF FAIRHAVEN**

Notice is hereby given under Chapter 138 of the Massachusetts General Laws that JEJM, Corp, d/b/a Travelers Ale House, 111 Huttleston Avenue, Fairhaven, MA, Minh Tieu, Manager, has applied for an Altered Premise transaction, by adding an outdoor dining/patio & bar area.

The proposed altered description of premise would include a fenced in area to be used; a trex deck for the raised floor, with 1 step up stair; a small outside bar area, with twelve (12) seats, six (6) tables, emergency exit door, string lights for outside area. A seven foot (7ft.) high wall in the back with an emergency/exit only door on the side, umbrella for every table or sun shades to cover the area, tall bushes would surround the perimeter of the outside dining area on the outside of the fencing; fenced in area would only be accessible through the restaurant. Exiting can go through the exit only or back through the restaurant and to the front door. Total Sq. Footage; 900 sq. ft.; number of entrances (1); number of exits (2); seating capacity (42); occupancy number (36); number of floors (1).

A hearing will be held at a Selectmen's Meeting, Fairhaven Town Hall, Banquet Room, 40 Center Street, Fairhaven, MA on Monday, July 12, 2021 at 7:00 PM.

## **BOARD OF SELECTMEN**

Daniel Freitas, Chairman  
Robert Espindola  
Keith Silvia



*The Commonwealth of Massachusetts*  
**Alcoholic Beverages Control Commission**  
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358  
[www.mass.gov/abcc](http://www.mass.gov/abcc)

**AMENDMENT-Change or Alteration of Premises Information**

☐ **Change of Location**

- Chg of Location/Alteration of Premises Application
- Financial Statement
- Vote of the Entity
- Supporting financial records
- Legal Right to Occupy
- Floor Plan
- Abutter's Notification
- Advertisement

☒ **Alteration of Premises**

- Chg of Location/Alteration of Premises Application
- Financial Statement
- Vote of the Entity
- Supporting financial records
- Legal Right to Occupy
- Floor Plan
- Abutter's Notification
- Advertisement

**1. BUSINESS ENTITY INFORMATION**

Entity Name

Municipality

ABCC License Number

JEJM Corp

Fairhaven

05823-rs-0384

Please provide a narrative overview of the transaction(s) being applied for. Attach additional pages, if necessary.

Adding out side dining on the side of the building

**APPLICATION CONTACT**

The application contact is the person who should be contacted with any questions regarding this application.

Name

Title

Email

Phone

Minh Tieu

President

minh@travelersalehouse.com

**2. ALTERATION OF PREMISES**

**2A. DESCRIPTION OF ALTERATIONS**

Please summarize the details of the alterations and highlight any specific changes from the last-approved premises.

outside dining, small bar, 6 tables, raised deck

**2B. PROPOSED DESCRIPTION OF PREMISES**

Please provide a complete description of the proposed premises, including the number of floors, number of rooms on each floor, any outdoor areas to be included in the licensed area, and total square footage. You must also submit a floor plan.

fence in area to be used, trex deck for the raised floor floor, 1 step up stair, small outside bar with 12 seats, 6 tables, emergency exit door, string lights for outside

Total Sq. Footage

900 sq ft

Seating Capacity

42

Occupancy Number

36

Number of Entrances

1

Number of Exits

2

Number of Floors

1

## AMENDMENT-Change or Alteration of Premises Information

### 3. CHANGE OF LOCATION

#### 3A. PREMISES LOCATION

Last-Approved Street Address

Proposed Street Address

#### 3B. DESCRIPTION OF PREMISES

Please provide a complete description of the premises to be licensed, including the number of floors, number of rooms on each floor, any outdoor areas to be included in the licensed area, and total square footage. You must also submit a floor plan.

Total Sq. Footage

Seating Capacity

Occupancy Number

Number of Entrances

Number of Exits

Number of Floors

#### 3C. OCCUPANCY OF PREMISES

Please complete all fields in this section. Please provide proof of legal occupancy of the premises. (E.g. Deed, lease, letter of intent)

Please indicate by what means the applicant has to occupy the premises

Lease

Landlord Name

Cathy Melanson

Landlord Phone

[REDACTED]

Landlord Email

totalconfections@gmail.com

Landlord Address

110 Adams Street Fairhaven, MA 02719

Lease Beginning Date

12-1-2020

Rent per Month

9,000

Lease Ending Date

12/1/2025

Rent per Year

108,000

Will the Landlord receive revenue based on percentage of alcohol sales?

☐ Yes ☒ No



4. FINANCIAL DISCLOSURE

Associated Cost(s): (i.e. Costs associated with License Transaction including but not limited to: Property price, Business Assets, Renovations costs, Construction costs, Initial Start-up costs, Inventory costs, or specify other costs):

Associated Cost(s):

20000

SOURCE OF CASH CONTRIBUTION

Please provide documentation of available funds. (E.g. Bank or other Financial institution Statements, Bank Letter, etc.)

| Name of Contributor | Amount of Contribution |
|---------------------|------------------------|
| JEJM Corp           | 20000                  |
|                     |                        |
|                     |                        |
|                     |                        |
| Total               | 20000                  |

SOURCE OF FINANCING

Please provide signed financing documentation.

| Name of Lender | Amount | Type of Financing | Is the lender a licensee pursuant to M.G.L. Ch. 138. |
|----------------|--------|-------------------|--|
|                |        |                   | <input type="radio"/> Yes <input type="radio"/> No   |
|                |        |                   | <input type="radio"/> Yes <input type="radio"/> No   |
|                |        |                   | <input type="radio"/> Yes <input type="radio"/> No   |
|                |        |                   | <input type="radio"/> Yes <input type="radio"/> No   |

## APPLICANT'S STATEMENT

I, Minh Tieu the: ☐ sole proprietor; ☐ partner; ☒ corporate principal; ☐ LLC/LLP manager  
Authorized Signatory  
of JEJM Corp  
Name of the Entity/Corporation

hereby submit this application (hereinafter the "Application"), to the local licensing authority (the "LLA") and the Alcoholic Beverages Control Commission (the "ABCC" and together with the LLA collectively the "Licensing Authorities") for approval.

I do hereby declare under the pains and penalties of perjury that I have personal knowledge of the information submitted in the Application, and as such affirm that all statements and representations therein are true to the best of my knowledge and belief. I further submit the following to be true and accurate:

- (1) I understand that each representation in this Application is material to the Licensing Authorities' decision on the Application and that the Licensing Authorities will rely on each and every answer in the Application and accompanying documents in reaching its decision;
- (2) I state that the location and description of the proposed licensed premises are in compliance with state and local laws and regulations;
- (3) I understand that while the Application is pending, I must notify the Licensing Authorities of any change in the information submitted therein. I understand that failure to give such notice to the Licensing Authorities may result in disapproval of the Application;
- (4) I understand that upon approval of the Application, I must notify the Licensing Authorities of any change in the ownership as approved by the Licensing Authorities. I understand that failure to give such notice to the Licensing Authorities may result in sanctions including revocation of any license for which this Application is submitted;
- (5) I understand that the licensee will be bound by the statements and representations made in the Application, including, but not limited to the identity of persons with an ownership or financial interest in the license;
- (6) I understand that all statements and representations made become conditions of the license;
- (7) I understand that any physical alterations to or changes to the size of the area used for the sale, delivery, storage, or consumption of alcoholic beverages, must be reported to the Licensing Authorities and may require the prior approval of the Licensing Authorities;
- (8) I understand that the licensee's failure to operate the licensed premises in accordance with the statements and representations made in the Application may result in sanctions, including the revocation of any license for which the Application was submitted; and
- (9) I understand that any false statement or misrepresentation will constitute cause for disapproval of the Application or sanctions including revocation of any license for which this Application is submitted.
- (10) I confirm that the applicant corporation and each individual listed in the ownership section of the application is in good standing with the Massachusetts Department of Revenue and has complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

Signature: Minh Tieu

Date: 5/19/2021

Title: President

### ADDITIONAL INFORMATION

Please utilize this space to provide any additional information that will support your application or to clarify any answers provided above.

Trex decking would be the floor, with a step up  
7ft high wall in the back with an emergency/exit only door on the side  
bar with chairs  
6 tables with chairs  
string lights outside  
umbrella for every table or sun shades to cover the area.  
tall bushes would surround the perimeter of the outside dining area on the outside of the fencing,  
fenced in area would only accessible through the restaurant. exiting can go through the exit only or back through the rest and to the front door



**CORPORATE VOTE**

The Board of Directors or LLC Managers of

JEJM Corp

Entity Name

duly voted to apply to the Licensing Authority of

Fairhaven

City/Town

and the

Commonwealth of Massachusetts Alcoholic Beverages Control Commission on

5/1/2021

Date of Meeting

For the following transactions (Check all that apply):

☒ Alteration of Licensed Premises

☐ Change of Location

☐ Other

"VOTED: To authorize

Minh Tieu

Name of Person

to sign the application submitted and to execute on the Entity's behalf, any necessary papers and do all things required to have the application granted."

A true copy attest,

For Corporations ONLY

A true copy attest,

*Minh Tieu*

Corporate Officer /LLC Manager Signature

Corporation Clerk's Signature

(Print Name)

(Print Name)



*The Commonwealth of Massachusetts*  
*Alcoholic Beverages Control Commission*  
95 Fourth Street, Suite 3, Chelsea, MA 02150-2358  
[www.mass.gov/abcc](http://www.mass.gov/abcc)

**RETAIL ALCOHOLIC BEVERAGES LICENSE APPLICATION  
MONETARY TRANSMITTAL FORM**

**AMENDMENT-Change or Alteration of Premises Information**

**APPLICATION SHOULD BE COMPLETED ON-LINE, PRINTED, SIGNED, AND SUBMITTED TO THE LOCAL  
LICENSING AUTHORITY.**

**ECRT CODE: RETA**

**Please make \$200.00 payment here: ABCC PAYMENT WEBSITE**

**PAYMENT MUST DENOTE THE NAME OF THE LICENSEE CORPORATION, LLC, PARTNERSHIP, OR INDIVIDUAL AND INCLUDE THE  
PAYMENT RECEIPT**

**ABCC LICENSE NUMBER (IF AN EXISTING LICENSEE, CAN BE OBTAINED FROM THE CITY)**

**ENTITY/ LICENSEE NAME**

**ADDRESS**

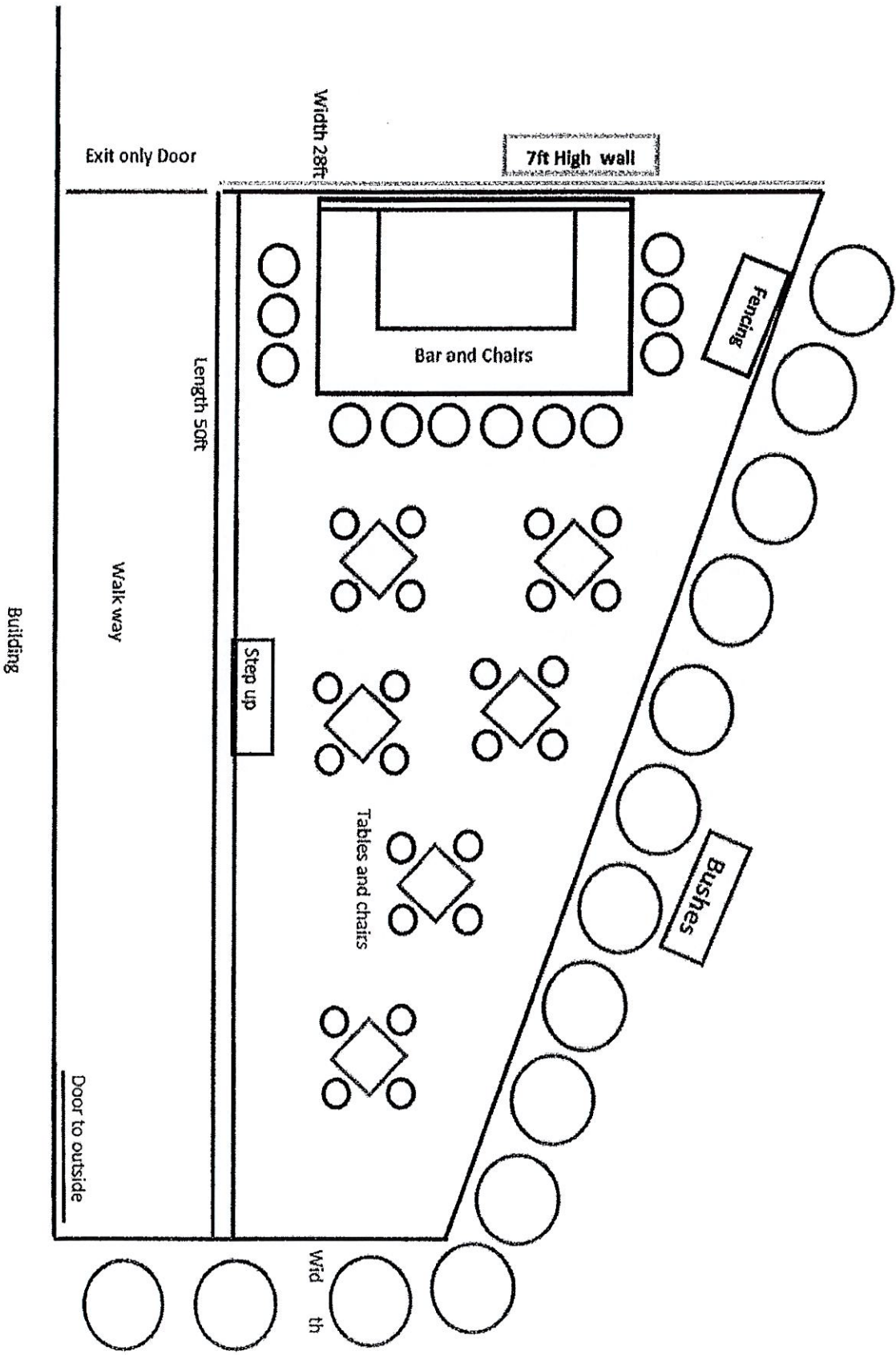
**CITY/TOWN**  **STATE**  **ZIP CODE**

**For the following transactions (Check all that apply):**

- |   |   |   |   |
|---|---|---|---|
| <input type="checkbox"/> New License                  | <input type="checkbox"/> Change Corporate Name                      | <input type="checkbox"/> Change of Class (i.e. Annual / Seasonal)         | <input type="checkbox"/> Change Corporate Structure (i.e. Corp / LLC) |
| <input type="checkbox"/> Transfer of License          | <input type="checkbox"/> Change of DBA                              | <input type="checkbox"/> Change of License Type (i.e. club / restaurant)  | <input type="checkbox"/> Change of Hours                              |
| <input type="checkbox"/> Change of Manager            | <input checked="" type="checkbox"/> Alteration of Licensed Premises | <input type="checkbox"/> Change of Category (i.e. All Alcohol/Wine, Malt) | <input type="checkbox"/> Pledge of Collateral (i.e. License/Stock)    |
| <input type="checkbox"/> Change of Officers/Directors | <input type="checkbox"/> Change of Location                         | <input type="checkbox"/> Issuance/Transfer of Stock/New Stockholder       | <input type="checkbox"/> Management/Operating Agreement               |
| <input type="checkbox"/> Change of Ownership Interest | <input type="checkbox"/> Other <input type="text" value=""/>        |   |   |

**THE LOCAL LICENSING AUTHORITY MUST MAIL THIS  
TRANSMITTAL FORM ALONG WITH  
COMPLETED APPLICATION, AND SUPPORTING DOCUMENTS TO:**

**Alcoholic Beverages Control Commission  
95 Fourth Street, Suite 3  
Chelsea, MA 02150-2358**







**Deborah B. Goldberg**  
*Treasurer and Receiver General*

*Commonwealth of Massachusetts  
Department of the State Treasurer  
Alcoholic Beverages Control Commission  
239 Causeway Street  
Boston, MA 02114*

**Kim S. Gainsboro, Esq.**  
*Chairman*

**GUIDELINES FOR EXTENSION OF PREMISES TO  
PATIO AND OUTDOOR AREAS**

1. Alcoholic beverages cannot be served outside of a licensed establishment unless and until an application to extend the licensed premises has been approved.
2. An application to extend the premises must describe the area in detail, including dimensions, seating capacity, and maximum occupancy.
3. The premises must be enclosed by a fence, rope, or other means to prevent access from a public walkway.
4. The outdoor area must be contiguous to the licensed premises with either (a) a clear view of the area from inside the premises, or, alternatively (b) the licensee may commit to providing management personnel dedicated to the area.
5. The applicant must have a lease or documents for the right to occupy the proposed area.
6. The licensing authorities should consider the type of neighborhood and the potential for noise in the environs.
7. Preferred are outdoor areas where alcohol is served to patrons who are seated at the tables and where food is also available.

## **Taylor Cultured Seafood**

56 Goulart Memorial Dr, Fairhaven, MA 02719

info@taylorculturedseafood.com

06/23/2021

Fairhaven Town Hall

Marine Resources Department

40 Center Street,

Fairhaven, MA 02719

Subject: Lease Transfer Application

To Marine Resources Department:

We, Taylor Cultured Seafood, are selling our aquaculture bussiness in Fairhaven, MA. We are writing this letter to apply the title transfer of the 44 acres aquaculture lease to the buyer, Blue Stream Shellfish, LLC. We will continue to operate the farm and take reposiblity and obligation of the acquaculture lease until the lease transferd to the buyer.

Please let us know if you have any questions and look forward to hearing from you.

Thank you,



Zack Zhang

Taylor Cultured Seafood

# Meet Precinct Three







Vicki Oliveira <vloliveira@fairhaven-ma.gov>

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## Roger school Committee

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**Cathy Melanson** <cathymelanson@yahoo.com>

Thu, Jun 17, 2021 at 9:30 PM

To: Vicki Oliveira <vloliveira@fairhaven-ma.gov>

Hi Vickie,

I am write this letter of interest for the Select Board to make a recommendation to have a member from the Economic Development Committee be placed on the Roger School Committee. It was mentioned at the EDC on 6/17/21 that a letter of request be sent to the Select Board. I myself am interest in, as a member of the EDC to be placed on that Board. I do believe it has to start with this letter to the Select Board. Please pass it to the Board members.

Thank you  
Cathy Melanson

## **ROGERS SCHOOL RE USE COMMITTEE MISSION STATEMENT**

The Rogers Study / Re Use Committee is an appointed five-member advisory board. The Committee is appointed by the Board of Selectmen and reports to the Board of Selectmen involving matters relating to the former Rogers School property.

In that capacity the Committees work will include, but not limited to reviewing and proposals received for the re use of the former school property and providing advice to the Board of Selectmen on the proposals received. The committee will provide advice to the board of selectmen on all possibilities for reuse of the former school property. The committee at the request of the Board of Selectmen will assist the town staff in all processes or help in needed matters regarding the former school. The Rogers Study / Re Use Committee is an Ad hoc committee and will serve until the work of the committee is completed as determined by the Board of Selectmen after which time the committee will be disbanded.

Approved by vote of the Board of Selectmen on April 12, 2021



Wendy Graves &lt;wgraves@fairhaven-ma.gov&gt;

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**Rogers School**

1 message

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**Thomas P. Crotty** <tomcrotty@tcrottylaw.com>  
Reply-To: tomcrotty@tcrottylaw.com  
To: Wendy Graves <wgraves@fairhaven-ma.gov>  
Cc: "William T. Harrington" <wharringtonlaw@gmail.com>

Thu, Jul 8, 2021 at 10:12 AM

Wendy

The court has entered the attached decision and order dismissing the case brought by Zachary Mayo and his company, New England Preservation and Development, against the town for the termination of the purchase and sale agreement for the Rogers School. The order also dissolves the lis pendens on the property. That order will become final in thirty days.

If the plaintiffs file an appeal within that thirty day period, the lis pendens would continue until a judge of the appeals court acts on that appeal. Appeals to the single justice are usually acted on quickly.

The court also ordered that the plaintiffs pay the town's attorneys' fees, and requires the town to submit affidavits of those fees within thirty days. Attorney Harrington and I will file those affidavits.

We will keep you advised of developments. Please let me know if you have any questions in the meantime.

Tom

Thomas P. Crotty

**Thomas P. Crotty & Associates, PLLC**

5 Dover Street, Suite 102

New Bedford, MA 02740-4992

TomCrotty@tcrottylaw.com

Tel: 508-990-9101 Fax: 508-990-9108

Cell/SMS: 508-916-7862

This e-mail message is generated from the law firm of Thomas P. Crotty & Associates, PLLC, and may contain information that is confidential and may be privileged as an attorney/client communication or as attorney work product. The information is intended to be disclosed solely to the addressee(s). If you are not the intended recipient, any disclosure, copying, distribution or use of the contents of this e-mail information is prohibited. If you have received this e mail in error, please notify the sender by return e-mail and delete it from your computer system.



**Rogers School Decision on Motion to Dismiss.pdf**  
496K



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#17

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
SUPERIOR COURT DEPARTMENT

BRISTOL, ss.

Civil Action No. 2073CV00650.

BRISTOL, SS SUPERIOR COURT  
FILED

NEW ENGLAND PRESERVATION AND  
DEVELOPMENT, LLC and  
ZACHARY MAYO,  
Plaintiffs

JUL - 6 2021

v.

MARC J SANTOS, ESQ.  
CLERK/MAGISTRATE

TOWN OF FAIRHAVEN,  
Defendant

MEMORANDUM OF DECISION AND ORDER ON  
DEFENDANT'S SPECIAL MOTION TO DISMISS AND  
DISSOLVE MEMORANDUM OF LIS PENDENS  
PURSUANT TO G.L. c. 184, § 15 (c)

The plaintiffs, New England Preservation and Development, LLC and its manager, Zachary Mayo, bring this action against the defendant, the town of Fairhaven, for breach of an agreement to sell premises that previously served as the Rogers School. The plaintiffs seek specific performance of the agreement or, in the alternative, compensatory damages.

The defendant town has filed a special motion to dismiss the amended verified complaint and to dissolve a memorandum of lis pendens, issued by the court on September 20, 2020, pursuant to G.L. c. 184, § 15 (c). The town also seeks an award of attorney's fees. The plaintiffs have filed a written opposition to the motion.

FACTS

"In ruling on the special motion to dismiss the court shall consider verified pleadings and affidavits, if any, meeting the requirements of the Massachusetts rules of civil procedure." G.L. c. 184, § 15 (c).

In May of 2018, the town issued a request for proposals for the renovation of the Rogers School property. Mayo submitted a proposal on behalf of New England Preservation and Development, LLC ("NEPD.") During the town's review of the proposal, Mayo submitted a letter dated July 24, 2018 from The Raymond C. Green Companies. The letter provided:

This letter shall confirm our interest in providing funds towards the remediation of the Rogers School Building and for the construction of four single family homes at the Property. Said financing will be subject to the terms and conditions of a loan commitment letter to be issued by Lender upon its review and approval of the approved development plans. This letter shall not be deemed a formal loan commitment.

Rees Affidavit, Exhibit A.

On July 23, 2019, the town entered into a written agreement to sell the former Rogers School premises to NEPD. Rees Affidavit, Exhibit C. The agreement was signed by Zachary Mayo, purportedly on behalf of NEPD. The agreement provided that the purchase price of \$ 35,000 would be paid at a closing to be held thirty days after either party provided notice to the other "of satisfaction of the last of all the conditions" set out in paragraph two of Rider A:

**2. Conditions:** The performance of the Purchase and Sale Agreement shall be conditioned on the satisfactory completion of the following conditions.

A. The Buyer shall prepare complete plans for development of the premises, including but not limited to, complete construction plans showing details of the components of the Rogers School building that are to be preserved, and new components to be added to the Rogers School building and to the premises, and the time line for project completion. Such plans shall be submitted by the Buyer to the Seller within one hundred twenty (120) days from the date of the full execution of this Agreement. Upon satisfactory completion of its review of those plans the seller will notify the Buyer, within thirty (30) days of receipt of the plans from the Buyer that the plans have been approved. In [the] event the Buyer is required to amend the plans prior to approval by the Seller, the Buyer shall be allowed an additional thirty (30) days to submit such amended plans. The plans as approved may not be further amended prior of the Seller [*sic*].



- B. The Buyer shall notify the Seller when it has obtained financing commitments sufficient to fund the development of the project, within one hundred eighty (180) days from the date of the full execution of this Agreement.
- C. The Buyer shall provide the Seller notice when it has obtained the necessary permits, including zoning permits and planning board approvals or endorsements necessary to proceed with the project. The Seller agrees that to the extent the Buyer is required to pay permit application fees, water and sewer tie in fees and BPW filing fees, the purchase price set forth in Paragraph 7 of the Purchase and Sale Agreement shall be reduced by the aggregate amount of all such payments, provided that the purchase price shall not be reduced by this, or any other reduction, or combination of reductions, below a price of \$ 17,500.00. The Seller also agrees to provide assistance to the Buyer in obtaining all necessary Town of Fairhaven municipal permits.
- D. The Buyer agrees to commence the application process to have the Rogers School building placed on the National Register of Historic Buildings and shall provide the Seller notice of such application. In the event such application is not approved within one hundred twenty (120) days of the full execution of this Agreement the Buyer will provide the Seller with a covenant or other legally enforceable mechanism, which shall be entered into a[t] time of conveyance of the deed, to guarantee the preservation of the historical component of the Rogers School building. In such event the Seller shall notify the Buyer when it is satisfied with the form of covenants or other documents, within thirty (30) days of the date of receipt by the Seller of such documents.
- E. The Buyer shall provide the Seller with a Letter of Credit sufficient to guarantee the completion of the work as shown on the approved plans. The Seller shall notify the Buyer when it is satisfied with such Letter of Credit within thirty (30) days of the date of receipt by the Seller of such documentation.

\*\*\*

3. **Right of Termination:** If each of the conditions set forth in paragraph 2 of this Rider A has not been satisfied, with notice thereof given as provided in each of the conditions, no later than one (1) year following the date of this Agreement, then either party may terminate this agreement by written notice [to] the other, and this agreement shall thereupon be void and without recourse.



Rider A was signed by the town administrator on behalf of the town, as "Seller," and by Zachary Mayo, as "Buyer."

Sometime thereafter, Mayo filed an application to register the building with the National Register of Historic Buildings. Mayo Affidavit, par. 8. Amended Verified Complaint, par. 21.

On December 28, 2019, NEPD was organized as a limited liability company with Zachary Mayo as its manager. Crotty Affidavit, Exhibit A.

On February 14, 2020, Mayo, on behalf of NEPD, submitted a letter to the town from Millers River Development, LLC. The letter provided in part:

This is a letter to confirm my interest and commitment to the project in Fairhaven, Ma. presented and being permitted by Zachary Mayo and **New England Preservation and Development, Inc.**

\*\*\*

I have spoken to one of our long time bankers at Cambridge Trust Company about the Fairhaven project and they have indicated that financing it would not present any kind of problem for them. They would require 20% equity or about 500K in cash. This does not present a problem for myself and my partners.

Rees Affidavit, Exhibit D (emphasis in original).

On February 19, 2020, the town administrator, Mark Rees, advised Mayo that the letter from Millers River Development did not satisfy the purchase and sale agreement because it was not a binding agreement to provide financing. Rees Affidavit, Exhibit E.

On May 21, 2020, Mayo submitted a timeline for obtaining required permits for the project. On May 28, 2020, Rees advised Mayo that the timeline was inadequate due, in part, to the lack of a date on which Mayo would submit architectural plans to the town's planning board. Rees Affidavit, Exhibit F.

On June 15, 2020, the town notified Mayo that the board of selectmen would consider terminating the purchase and sale agreement at their meeting on June 29, 2020 unless Mayo provided an executed agreement with an architectural or engineering firm with a timeline prepared by an architect or engineer. Rees Affidavit, Exhibit G.

On June 26, 2020, Mayo submitted a timeline for the project and a contract between NEPD and Civil Environmental Consultants [*sic*], L.L.C. The contract provided for the design of the project for \$ 35,000. Rees Affidavit, Exhibit H.

On July 15, 2020, Rees sent a letter to Mayo informing him and NEPD that the board of selectmen had decided to terminate the purchase and sale agreement based on the buyer's failure to fulfill conditions B (financial commitment), C (necessary permits), D (National Register of Historic Buildings) and E (letter of credit) set out on Rider A to the agreement. Rees Affidavit, Exhibit J. The letter stated that, notwithstanding the termination, the board of selectmen proposed that Mayo, his attorney and financial backer meet with Rees no later than July 23, 2020. The letter stated that if Mayo provided "written proof of a legally binding financial commitment, satisfactory to the Board of Selectmen in its absolute and sole discretion, in both form and amount," the board would consider amending the purchase and sale agreement to extend the time for the buyer's performance. *Id.*

Although a video conference between Mayo and Rees was scheduled for July 20, 2020, the meeting was cancelled when an employee at town hall tested positive for COVID-19. Rees Affidavit, par. 14 & 15.

On July 24, 2020, at Mayo's suggestion, town counsel spoke to Bart Bussink, managing partner of Millers River Development, LLC. Bussink said that Millers River Development would not finance the project. Crotty Affidavit, par. 16 & 17.

That same day, the town administrator sent a notice of termination of the purchase and sale agreement to Mayo and NEPD. Rees stated that the town terminated the agreement due to the buyer's failure to fulfill conditions B (financial commitment), C (necessary permits), D (National Register of Historic Buildings) and E (letter of credit) set out on Rider A to the agreement. Rees Affidavit, Exhibit L.

In his affidavit, Mayo states that he "attempted to obtain the Town's assistance with permitting and preparing acceptable plans. However, the Town repeatedly rebuffed, and failed to respond to, my requests, despite its contractual obligations. The Town also repeatedly demanded additional documents and information not required by the Agreement. I complied with a number of these serial requests, although I was not contractually obligated to do so." Mayo Affidavit, par. 8-11. Mayo did not provide further details.

### **ANALYSIS**

The plaintiffs have asserted two claims in their amended verified complaint: (1) breach of contract and (2) breach of the implied covenant of good faith and fair dealing. The town contends that the plaintiffs' claims are frivolous. The town seeks dissolution of the previously issued memorandum of lis pendens and dismissal of the amended verified complaint pursuant to G.L. c. 184, § 15 (c). The town also seeks an award of attorney's fees pursuant to that statute.

G.L. c. 184, § 15 provides a procedure by which a person asserting a claim to real property may obtain a memorandum of lis pendens, which the claimant may record in the appropriate registry of deeds or register in the appropriate division of the Land Court in order to provide notice of the litigation to third parties. G.L. c. 184, § 15 (b) provides that the court "shall" issue the memorandum "if the subject matter of the action constitutes a claim of a right to title to real property or the use and occupation thereof or the buildings thereon...."



The statute also provides a mechanism by which a defendant may seek dissolution of a memorandum of lis pendens and dismissal of such an action if the claim is frivolous:

A party may also file a special motion to dismiss the claimant's action if that party believes that the action or claim supporting the memorandum of lis pendens is frivolous. ...The special motion to dismiss shall be granted if the court finds that the action or claim is frivolous because (1) it is devoid of any reasonable factual support; or (2) it is devoid of any arguable basis in law; or (3) the action or claim is subject to dismissal based on a valid legal defense such as the statute of frauds. In ruling on the special motion to dismiss the court shall consider verified pleadings and affidavits, if any, meeting the requirements of the Massachusetts rules of civil procedure. If the court allows the special motion to dismiss, it shall award the moving party costs and reasonable attorneys fees, including those incurred for the special motion, any motion to dissolve the memorandum of lis pendens, and any related discovery.

G.L. c. 184, § 15 (c).

“[A] special motion to dismiss under § 15(c) requires the motion judge to consider alleged facts beyond the plaintiff's initial pleading and, based on those allegations, to determine whether the plaintiff's claims are devoid of a factual or legal basis.... [T]he burden is on the defendant to demonstrate, by a preponderance of the evidence, that the plaintiff's claim is completely lacking in ‘reasonable factual support ... or ... any arguable basis in law.’ ...‘[T]he question to be determined by a judge in deciding a special motion to dismiss [under § 15(c)] is not which of the parties’ pleadings and affidavits are entitled to be credited or accorded greater weight,’ but whether the party with the burden of proof (here, the defendants) has shown that the claim made by the moving party was devoid of any reasonable factual support or arguable basis in law.” *Ferguson v. Maxim*, 96 Mass. App. Ct. 385, 390 (2019).

**NEPD's Claim.** The town argues that NEPD's claims are frivolous because NEPD was not formed until December 28, 2019, which was five months after the contract was signed. The town argues that NEPD therefore has no right to enforce the contract.

Under an 1889 Supreme Judicial Court decision, a corporation that was not formed until after a contract was signed in its name is not a party to the contract. “If a contract is made in the name and for the benefit of a projected corporation, the corporation, after its organization, cannot become a party to the contract, even by adoption or ratification of it.” *Abbott v. Hapgood*, 150 Mass. 248, 252 (1889). Whether the Court would adhere to this rule today is questionable. “While never renounced, the rule has been gradually eviscerated....” *Copp v. Hague*, 1994 Mass. App. Div. 11. “This rule is the extreme minority position. Most states hold that a corporation can be bound to a pre-incorporation agreement by some signal of knowing ratification or adoption of the contract.” *Framingham Savings Bank v. Szabo*, 617 F.2d 897, 898 (1<sup>st</sup> Cir. 1980).

The *Abbott* rule “does not mean that after the organization of the corporation it cannot enter into a contract such as previously had been prepared.” *Pennell v. Lothrop*, 191 Mass. 357, 360 (1906). “Massachusetts appears willing to bind a corporation to the terms of a preincorporation contract... by means of theories of continuing offer and implied contract.” *Framingham Savings Bank, supra*, at 899 (footnote omitted), citing *Holyoke Envelope Co. v. United States Envelope Co.*, 182 Mass. 171 (1902).

NEPD’s claim is not “devoid of any reasonable factual support [or] devoid of any arguable basis in law,” G.L. c. 184, § 15 (c), merely because the company came into existence after the contract was signed. There is, at least, an arguable basis to conclude that the Supreme Judicial Court would overturn the *Abbott* rule and bring Massachusetts in line with the majority rule. There is little, if any, reason to prohibit a corporation or other legal entity from enforcing its rights under a contract, where the other party to the contract understood it was entering into a contract with the corporation.



Even if the *Abbott* rule remains good law, a reasonable jury could find that NEPD accepted the town's "continuing offer" to enter the contract on February 14, 2020 when NEPD submitted to the town a letter from Millers River Development, LLC as evidence that NEPD had financial backing for the project.

***Breach of Contract.*** The town argues that the plaintiffs' claim for breach of contract is devoid of "any reasonable factual support" and "any arguable basis in law," G.L. c. 184, § 15 (c), because the undisputed facts demonstrate that the town properly terminated the contract.

The contract provided that the town could terminate the contract if the plaintiffs failed to fulfill certain conditions:

If each of the conditions set forth in paragraph 2 of this Rider A has not been satisfied, with notice thereof given as provided in each of the conditions, no later than one (1) year following the date of this Agreement, then either party may terminate this agreement by written notice [to] the other, and this agreement shall thereupon be void and without recourse.

Rees Affidavit, Exhibit C, Rider A, par. 3.

On July 24, 2020, the town sent written notice to the plaintiffs terminating the contract due to the buyer's failure to fulfill Conditions B (financial commitment), C (necessary permits), D (National Register of Historic Buildings) and E (letter of credit) set out on Rider A to the agreement. Rees Affidavit, Exhibit L.<sup>1</sup>

The plaintiffs argue that the termination clause is "irrelevant" because the town breached the contract prior to the purported termination by its "refusal 'to accept Plaintiffs' submission of documents required by the Agreement, its imposition of requirements and standards not contained in the Agreement, its failure to assist Plaintiffs in obtaining necessary permits, and its improper purported termination of the Agreement.'" Plaintiffs' Opposition, p. 9.

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<sup>1</sup> The town sent an earlier notice of termination for the same reasons on July 15, 2020. Rees Affidavit, Exhibit J. However, that notice was ineffective since it was sent less than one year after execution of the contract.



The termination clause is not “irrelevant.” “A breach of contract is a failure to perform for which legal excuse is lacking.” *Realty Developing Co., Inc. v. Wakefield Ready-Mixed Concrete Co., Inc.*, 327 Mass. 535, 537 (1951). The town’s duty under the contract was to convey the land. However, that duty was subject to conditions precedent set out on Rider A. “A condition precedent is an act which must occur before performance by the other party is due.” *Wood v. Roy Lapidus, Inc.*, 10 Mass. App. Ct. 761, 763 n. 5 (1980).

The issue before the court is whether the town was entitled to terminate due to the plaintiffs’ failure to fulfill Conditions B, C, D and E on Rider A. If the town prevented the plaintiffs from fulfilling those conditions by, for example, refusing to accept required documents or by failing to assist the plaintiffs in obtaining permits as the town promised, that conduct would excuse the plaintiffs from their obligation to fulfill the conditions. A condition “may be excused by prevention or hindrance of its occurrence through a breach of the duty of good faith and fair dealing.” *Restatement of Contracts (Second)* § 225 comment b. See *Lobosco v. Donovan*, 30 Mass. App. Ct. 53, 56 (1991).

Under G.L. c. 184, § 15 (c), therefore, the town has the burden of proving that its termination was proper, i.e. the plaintiffs failed to fulfill at least one of the four conditions precedent without legal excuse. If there is evidence in the record – even doubtful and disputed evidence, *Ferguson, supra*, – that the plaintiffs fulfilled all four conditions precedent or that fulfillment of the conditions was legally excused, the court must deny the town’s motion.

Condition B on Rider A, which relates to financing, provides:

The Buyer shall notify the Seller when it has obtained financing commitments sufficient to fund the development of the project, within one hundred eighty (180) days from the date of the full execution of this Agreement.

Rees Affidavit, Exhibit C.

A “commitment” to provide financing is “[a] lender’s binding promise to a borrower to lend a specified amount of money at a certain interest rate, usu. within a specified period and for a specified purpose (such as buying real estate).” Black’s Law Dictionary, “Loan Commitment” (11<sup>th</sup> ed. 2019).

The plaintiffs did not notify the town of any “financing commitments sufficient to fund the development of the project” by January 19, 2020, which was one hundred eighty days after the parties executed the agreement.<sup>2</sup> On February 14, 2020, Mayo provided the town administrator with a letter from Millers River Development, LLC. Rees Affidavit, Exhibit D. The letter confirmed the company’s “interest and commitment to the project....” However, the letter was not a “commitment[] sufficient to fund the development of the project” as required by Condition B. The letter stated that Miller’s River would provide twenty percent of the financing. The other eighty percent would come from Cambridge Trust Company, which did not provide a “commitment” for the financing. The letter merely stated that Bart Bussink, managing partner of Miller’s River, spoke to an unidentified person at Cambridge Trust Company, who said that providing such financing “would not present any kind of problem for them.” The plaintiffs never provided the town with notice that any lender committed itself to provide financing “sufficient to fund the development of the project....”<sup>3</sup> Therefore, the plaintiffs failed to fulfill Condition B. There is no evidence in the record that the plaintiffs were legally excused from fulfilling that Condition. The town therefore had the right to terminate the contract.

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<sup>2</sup> A year prior to execution of the agreement, Mayo provided the town with a letter from the Raymond C. Green Companies confirming its interest in financing the project. However, that letter expressly stated: “This letter shall not be deemed a formal loan commitment.” Rees Affidavit, Exhibit A.

<sup>3</sup> In addition, on July 24, 2020 – the day the town sent its termination letter to the plaintiffs – Mr. Bussink informed town counsel that Miller’s River would not finance the project. Crotty Affidavit, par. 16 & 17.



Condition C on Rider A, which relates to permits, provides:

The Buyer shall provide the Seller notice when it has obtained the necessary permits, including zoning permits and planning board approvals or endorsements necessary to proceed with the project. The Seller agrees that to the extent the Buyer is required to pay permit application fees, water and sewer tie in fees and BPW filing fees, the purchase price set forth in Paragraph 7 of the Purchase and Sale Agreement shall be reduced by the aggregate amount of all such payments, provided that the purchase price shall not be reduced by this, or any other reduction, or combination of reductions, below a price of \$ 17,500.00. The Seller also agrees to provide assistance to the Buyer in obtaining all necessary Town of Fairhaven municipal permits.

Rees Affidavit, Exhibit C.

The plaintiffs never obtained “necessary permits, including zoning permits and planning board approvals or endorsements necessary to proceed with the project.” However, the plaintiffs argue that the reason they did not obtain the permits is that the town failed to provide assistance, as the town promised. Mayo states in his affidavit that he “attempted to obtain the Town’s assistance with permitting and preparing acceptable plans. However, the Town repeatedly rebuffed, and failed to respond to, my requests, despite its contractual obligations.” Mayo Affidavit, par. 8 & 9. In addition, the amended verified complaint alleges that in May of 2020 the town selectmen “instructed Plaintiffs to reach out to the Town’s Planning Department to organize the necessary permit applications and plan requirements. Plaintiffs did so numerous times, but did not hear back for weeks.” Amended Verified Complaint, par. 22-24. This evidence provides at least an arguable basis in fact and law to conclude that the plaintiffs’ compliance with Condition C was legally excused.

Condition D on Rider A, which concerns registration of the school building with the National Register of Historic Buildings, provides:



The Buyer agrees to commence the application process to have the Rogers School building placed on the National Register of Historic Buildings and shall provide the Seller notice of such application. In the event such application is not approved within one hundred twenty (120) days of the full execution of this Agreement the Buyer will provide the Seller with a covenant or other legally enforceable mechanism, which shall be entered into a[t] time of conveyance of the deed, to guarantee the preservation of the historical component of the Rogers School building. In such event the Seller shall notify the Buyer when it is satisfied with the form of covenants or other documents, within thirty (30) days of the date of receipt by the Seller of such documents.

Rees Affidavit, Exhibit C.

In his affidavit, Mayo averred that after the contract was signed, he “filed an application to have the Property listed on the National Register of Historic Buildings...” Mayo Affidavit, par. 8. However, he does not claim – and there is no evidence to indicate – that he “provide[d] the Seller notice of such application,” as required by Condition D. Accordingly, the plaintiffs did not fulfill Condition D and the town was justified in terminating the contract.

Condition E on Rider A, which concerns a letter of credit, provides:

The Buyer shall provide the Seller with a Letter of Credit sufficient to guarantee the completion of the work as shown on the approved plans. The Seller shall notify the Buyer when it is satisfied with such Letter of Credit within thirty (30) days of the date of receipt by the Seller of such documentation.

Rees Affidavit, Exhibit C.

The plaintiffs do not dispute that they failed to provide the town with a letter of credit. Instead, they argue that the parties modified the condition. The amended verified complaint alleges that “[t]he Town and Plaintiffs also agreed that Plaintiffs could provide a performance bond at closing in lieu of the letter of credit.” Amended Verified Complaint, par. 15.

The written agreement provides that the document “sets forth the entire contract between the parties... and may be cancelled, modified or amended only by a written instrument executed

by both the SELLER and the BUYER.” Rees Affidavit, Exhibit C, par. 21. The plaintiffs do not contend that the parties modified the contract in writing.

“[A] provision that an agreement may not be amended orally but only by a written instrument does not necessarily bar oral modification of the contract.” *Cambridgeport Savings Bank v. Boersner*, 413 Mass. 432, 439 (1992). However, “[t]he evidence of a subsequent oral modification must be of sufficient force to overcome the presumption that the integrated and complete agreement, which requires written consent to modification, expresses the intent of the parties.” *Id.* at 439 n. 10. In the context of a summary judgment motion, the Appeals Court has held that a party’s claim that such a written contract was modified orally, without more, is insufficient to raise a genuine issue of fact for trial. “[I]n order to support the existence of an oral modification, the parol evidence must be sufficiently weighted and of competent probity to present a material issue for trial; that is, the parol evidence must be of sufficient strength to present an ambiguity between the actual conduct of the parties and the contract.... [A]mbiguity cannot be predicated solely on statements in affidavits.” *Wells Fargo Business Credit v. Environamics Corp.*, 77 Mass. App. Ct. 812, 817 (2010). (citation omitted.)

The same rule should apply to a special motion to dismiss under G.L. c. 184, § 15 (c) since such motions are also decided on verified pleadings and affidavits. The only evidence in the record of an oral modification of Condition E, agreed to by the parties after execution of the written contract, is Mayo’s conclusory claim of an oral modification in the verified amended complaint. That claim does not indicate who agreed to modify the written contract on behalf of the town or when or how the town agreed to the modification. There is no way to know from the conclusory assertion whether the town official (whoever it was) had authority to bind the town. The conclusory assertion is insufficient to overcome the written contract language.



***Breach of Covenant of Good Faith and Fair Dealing.*** The plaintiffs also allege that the town breached the implied covenant of good faith and fair dealing in the purchase and sale agreement.

“Every contract implies good faith and fair dealing between the parties to it. ...The implied covenant of good faith and fair dealing provides that neither party shall do anything that will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract....” *Anthony’s Pier Four, Inc. v. HBC Associates*, 411 Mass. 451, 471 (1991) (internal quotations and citations omitted). The implied covenant “exists so that the objectives of the contract may be realized.” *Ayash v. Dana-Farber Cancer Institute*, 443 Mass. 367, 385 (2005).

The town’s good faith in dealing with the plaintiffs is amply demonstrated by the attempts it made to salvage the project when the plaintiffs failed to fulfill the conditions of the agreement. In the premature termination letter sent to the plaintiffs on July 15, 2020, the town offered to consider amending the agreement to give the plaintiffs more time to fulfill the conditions if they could show that they had the financial ability to complete the project. Rees Affidavit, Exhibit J. The town administrator later scheduled a meeting with Mayo to find out if the plaintiffs had the financial ability to complete the project. *Id.* at par. 13-15. Crotty Affidavit, par. 14 & 15. Even after the town sent its proper termination letter on July 24, 2020, town counsel spoke with Bart Bussink of Millers River Development and the plaintiffs’ attorney to explore the possibility of continuing with the project. Crotty Affidavit, par. 14-27.

It is clear from these facts that the town repeatedly attempted to work things out with the plaintiff so that the project could proceed. The failure of the project was not due to a lack of good faith by the town but due to the plaintiffs’ inability to secure financing.



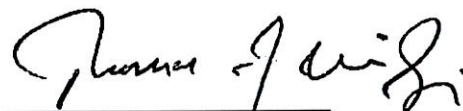
**Conclusion.** The plaintiffs failed to fulfill three conditions precedent – Condition B (financial commitment), Condition D (National Register of Historic Buildings) and Condition E (letter of credit) – to the town’s performance under the contract. The town had the right to terminate the contract, as provided in paragraph 3 of Rider A. The town exercised that right by giving written notice as the contract required. The town has therefore carried its burden of proving by a preponderance of the evidence that the plaintiff’s claim is completely lacking in “reasonable factual support ... or ... any arguable basis in law.” *Ferguson, supra*, quoting G.L. c. 184, § 15 (c).

### ORDER

The defendant’s special motion to dismiss (Paper # 16) is **ALLOWED**. The memorandum of lis pendens is **DISSOLVED**. The amended verified complaint is **DISMISSED**. The court **AWARDS** the defendant its attorney’s fees incurred in this action to be paid by the plaintiffs.

The defendant shall file and serve an affidavit of attorney’s fees within thirty days. The plaintiffs may file an opposition to the amount of attorney’s fees sought by the defendant within thirty days after service of the defendant’s affidavit.

July 3, 2021



Thomas F. McGuire, Jr.  
Justice of the Superior Court



June 17, 2021

Select Board,

Upon request, here is the info pertaining to additional hybrid/ remote meeting room(s) equipment needed based on Yes vote on Article 56 at the June 14, 2021 Annual Town Meeting.

ARTICLE 56: CITIZENS PETITION-AMENDMENT TO TOWN BY-LAW CHAPTER 50-13 PART 2 To see if the Town will vote to amend Town By-law c50-13 Part 2 (Televised Meetings take another action relative thereto. Amend the following title and section: Part 2 Televising Board Meetings and Allowing Remote Public Participation 50-10 Broadcast/recording/remote public participation required. All meetings of Town boards, commissions and committees shall be broadcast live and/or recorded for future broadcast over the local cable television network and online viewing as well as allow virtual remote participation via a live online platform such as Zoom or similar service unless emergency, operational or technical conditions suspend the requirements hereof, as determined by the Town Administrator, for broadcasts over the public access and government channels or the School Superintendent for broadcasts over the education channel. Members of the public may participate with comments if allowed by the Chair of the committee. C50-13 Compliance with Open Meeting Law Nothing contained in this bylaw shall be so construed as to conflict with the requirements of the Open Meeting Law, MGL 30A. Petitioned by: Anne Morton Smith

**Option 1:** Large Scale meetings (Location Auditorium)

A/V Equipment (10-12 Wireless Mics, Mixer, Speaker PA, Zoom A/V Adapters) -  
**\$10,546.20**  
86" ViewSonic Smartboard - **\$6505.00**  
**Total: \$17,051.20**

**Option 2:** Small Scale Meetings (Possible locations – Banquet Room, East Room, BPW)

4K Conference Camera System with Dual-Speakers and Mic Pods Set  
(Possible locations – East Room, BPW) - **\$2386.79**

Accessories: 65" ViewSonic Smartboards (Possible locations – East Room, BPW) -  
**\$4505 each**

Total per location: **\$6891.79**

**ZOOM Platform Costs:**

\$140/month for webinar for up to 500 participants (**\$1680/yr**)

\$199.90/month for 10 standard business licenses (**\$2388/yr**)

Currently paid for by Covid-19 Cares Reimbursement, set to expire at some point.

**Fairhaven Town Cable Access Enterprise  
Retained Earnings Available as of 6-17-21**

|  |                           |
|--|---------------------------|
| <b>Beginning Balance 7/1/20</b>        | <b>\$693,838</b>          |
| <b>Amount used for FY 22 Budget</b>    | <b><u>(\$ 49,587)</u></b> |
| <b>Retained Earnings as of 6/17/21</b> | <b>\$644,251</b>          |

Currently the Comcast Cable Budget is split between Town and School:

Town Cable = 56% ( 2 Channels: Government Access Channel 18 & Public Access Channel 95)

School Cable = 44% ( 1 Channel: Educational Access Channel 9)

An increase to the Town Cable percentage would allow us to hire a Part-Time Production Assistant (19 hrs per week) in addition to Full time positions of Cable Access Director and Production Coordinator to guarantee coverage of all meetings. We currently rely on Videographers, paid an hourly rate with no set schedule and availability.

Thank You,

**Derek T. Frates**

Government /Public Access Director

Town of Fairhaven



# Update of Opioid Litigation